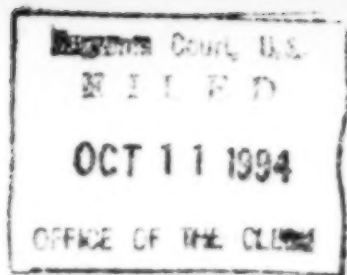


16
CASE NO: 94-23

IN THE

Supreme Court of the United States

TERM: OCTOBER 1994



CITY OF EDMONDS

Petitioner

v.

Washington State Building Code
Council, et al.,

Respondents

and

United States of America

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT
OF APPEALS FOR NINTH CIRCUIT

REPLY BRIEF OF PETITIONER

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QUESTION PRESENTED FOR REVIEW

Does the traditional zoning definition of a "single family," established to limit the use and occupancy of residences in single family residential zones, constitute a "reasonable occupancy limitation" pursuant to the exemption created by the Fair Housing Act Amendments, 42 U.S.C. §3607(b)(1), when neutral on its face and applied without any evidence of an intent to discriminate against persons protected by the Fair Housing Act and Fair Housing Act Amendments, 42 U.S.C §§3601 - 3631?

PARTIES TO THE PROCEEDING

City of Edmonds, Washington
 United States of America
 Oxford House-Edmonds
 Oxford House, Inc.
 Herb Hamilton
Parties Dismissed¹

¹The following original parties have been dismissed by order of the District Court: Washington State Building Code Council; City of Everett, Washington; Oxford House-Hoyt; United States - Department of Housing and Urban Development; Jack Kemp and Richard L. Bauer.

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MISCELLANEOUS

H.R. Rep. No. 711, 100th Cong.,
2nd Sess. at 23, reprinted in
1988 U.S.C.C.A.N. 2173 3

Respondents Oxford House and the United States in their Briefs in Opposition to the City of Edmonds' Petition for Writ of Certiorari assert that 1993 enactments by the Washington State Legislature render the issues in this appeal moot. This Reply Brief is offered on two issues:

1. The meaning and effect of the action of the Washington State Legislature is unclear, has not been judicially interpreted, is currently not the subject of litigation and would benefit from clarification of the Fair Housing Act Amendments and its exemption of state, local and federal occupancy limitations.

2. The issues are not moot due to the action maintained against the City by the United States for damages under the Fair Housing Act Amendments for acts

allegedly committed well prior to the enactment of the state provisions.

ISSUE NO. 1

In 1993 the Washington State Legislature amended the Washington Discrimination Act to incorporate the Fair Housing Act and Fair Housing Act Amendments. 1993 Washington Session Laws, Chapter 69. The legislature also enacted during the same legislative session the provision referenced in the briefs of Oxford House and the United States. 1994 Washington Session Laws, Chapter 273, §§ 14 and 16. No Washington appellate case has considered the impact of RCW 35A.63.240 nor is Petitioner aware of an action pending in any Washington court relating to interpretation of the provisions.

RCW 35A.63.240 states:

No city may enact or maintain any ordinance, development regulation, zoning regulation or official control, policy, or administrative practice which treats a residential structure occupied by persons with handicaps differently than a similar residential structure occupied by a family or other unrelated individuals. As used in this section, "handicaps" are as defined in the Fair Housing Amendments Act of 1988 (U.S.C. § 3602).

This paragraph unartfully attempts to incorporate comments of Congress contained in the legislative record regarding enactment of the Fair Housing Act Amendments and particularly 42 U.S.C. §3607(b)(1). H.R. Rep. No. 711, 100th Cong., 2nd Sess. at 23, reprinted in 1988 U.S.C.C.A.N. 2173. The reference in the state statute to residential structures confuses rather than clarifies the intent

of the state legislature. There is no state legislative history on the meaning or intent of the action.

As the second issue of this Reply Brief notes, an action for damages by the federal government prevents any allegation of mootness. Similarly, the intent and impact of the Washington state provision is far from clear. Clarification by the Supreme Court of the obligations of the parties under the Fair Housing Act would benefit resolution of the state issue. The incorporation of state statutes parallel to the Fair Housing Act and Fair Housing Act Amendments and the contemporaneous enactment of RCW 35A.63.240 clearly indicates an intent by the state of Washington to incorporate the Fair Housing Act and Fair Housing Act amendments. What the obligations of a

municipality is under state statute will necessarily parallel its federal obligation under the Fair Housing Act Amendments. Therefore, clarification of this issue would not only solve a national purpose by resolving a conflict between the circuits but also provide guidance to the state courts in interpreting and applying the state enactments.

ISSUE NO. 2

Irrespective of any potential application of the recent amendment of statute relative to a City's zoning powers, Washington Revised Code Section 35A.63.240 RCW, and its prospective impact on the validity of Edmonds' zoning ordinance, issues exist as to whether a violation of the Federal Fair Housing Act Amendments has occurred as claimed by the Federal Government in its complaint

against the City of Edmonds. When one of several issues becomes moot, the remaining live issues satisfy the case or controversy requirement of Article III. Powell v. McCormack, 395 U.S. 486, 23 L.Ed.2d 491, 502, 89 S.Ct. 1944 (1969). Consequently, the Federal Government's claim precludes a finding of mootness.

This appeal arose after consolidation of two, separate underlying actions: (1) a declaratory judgment action initiated by the City of Edmonds, and (2) an action for violation of the FHAA brought by the Federal Government against the City of Edmonds. The Federal Government filed its complaint in 1991 requesting damages and civil penalties under 42 U.S.C. § 3614(d)(1)(B) & (C) as well as declaratory and injunctive relief for alleged FHAA violations. Enactment of RCW 35A.63.240

did not occur until 1993. Even assuming arguendo that Washington's zoning amendment renders the City of Edmonds' declaratory judgment action moot, issues remain regarding the validity of the Federal Government's claim for alleged Fair Housing Act Amendment violations. The continued potential for the assessment of damages and penalties against the City of Edmonds establishes a concrete interest of the parties in a final resolution of whether ECDC constitutes a reasonable occupancy limitation exempt from the Fair Housing Act Amendment requirements. So long as a claim for damages and penalties exist, the parties have an interest in the outcome of the litigation which precludes a finding of mootness. See, e.g., Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 56 L.Ed.2d 30, 98 S.Ct. 1554

(1978); Ellis v. Brotherhood of Ry.,
Airline and S.S. Clerks, Freight Handlers,
Exp and Station Employees, 466 U.S. 435,
80 L.Ed.2d 428, 104 S.Ct. 1883 (1984).

Respectfully submitted.

W. Scott Snyder

October 1994